

DRAFT Meeting Minutes

Public Body Procurement Workgroup

Meeting # 5

Tuesday, July 18, 2023, 9:30 a.m.
House Committee Room
The Pocahontas Building
900 E. Main Street, Richmond, Virginia 23219

<https://dgs.virginia.gov/dgs/directors-office/pwg/>

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House Committee Room in the Pocahontas Building in Richmond, Virginia, with Joe Damico, Director of the Department of General Services (DGS), presiding. The meeting began with remarks from Mr. Damico, followed by an update on SB 1115, a presentation on SB 954, public comment and concluded with discussion among the Workgroup members. Materials presented at the meeting are available through the [Workgroup's website](#). A recording of the meeting is available on the [House of Delegates video streaming site](#).

Workgroup members and representatives present at the meeting included Joe Damico (Department of General Services), Lisa Pride (Virginia Department of Transportation), Patricia Innocenti (Virginia Association of Governmental Procurement), John McHugh (Virginia Association of State Colleges and University Purchasing Professionals), Leslie Haley (Office of the Attorney General), Jason Saunders (Department of Planning and Budget), Willis Morris (Department of Small Business and Supplier Diversity), Joanne Frye (the Division of Legislative Services), Kim McKay (House Appropriations Committee), and Mike Tweedy (Senate Finance and Appropriations Committee). A member from the Virginia Information Technologies Agency (VITA) did not attend.

I. Call to Order; Remarks by Chair

Joe Damico, Director
Department of General Services

Mr. Damico called the meeting to order and shared that Josh Heslinga with the VITA is not in attendance.

II. Approval of Meeting Minutes from the June 27, 2023 Workgroup Meeting

Mr. Morris made a motion to approve the meeting minutes from the June 27, 2023 meeting of the Workgroup. The motion was seconded by Mr. Saunders and unanimously approved by the Workgroup.

III. Update on SB 1115

Mr. Damico shared with the Workgroup that further discussion on this bill will be held at the next meeting scheduled for August 8, 2023.

IV. Presentation on SB 954

Mr. Damico began by informing the Workgroup that Senator Petersen is unable to attend to introduce SB 954 to the Workgroup, however, Senator Petersen requested the Virginia Contractor Procurement Alliance (VCPA) speak on his behalf.

Tony Biller, President and CEO of Nielsen Builders, Inc. spoke on behalf of the VCPA to the Workgroup. Mr. Biller shared with the Workgroup that the VCPA was formed almost more than a decade ago to look at procurement issues and is comprised of general contractors, ranging from \$20 million to \$100 million dollars which are considered mid-size contractors, and some subcontractor members. He stated that VCPA was formed because around 2008 – 2010, almost all construction projects were procured via competitive sealed bidding and that began to change with the allowance of alternative procurements. Mr. Biller stated that his focus is primarily on universities, however the problem he will describe is now moving into the public sector and other projects. He explained that competitive sealed bidding is when the owner hires an architect to design a project for an intended use and once the design is complete, the project is put out to bid on the open market, then the lowest bidder wins the project.

He explained that the original concept for alternative procurements was for projects that are unique and required a different method other than low bid, so construction management (CM) and design-build (DB) were created. He provided two examples of when CM would be appropriate to use, (i) a \$150 million athletic facility, or (ii) a rotunda that needs renovation where specific historic experience from the contractor who would handle this project is needed.

Mr. Biller stated that his group is not against CM as a concept, however they are concerned about the overuse of CM. He shared that several years ago, the Joint Legislative Audit and Review Commission (JLARC) did a study about procurement and in the study it stated that competitive sealed bidding is the only way to ensure the best quality and best price. Mr. Biller shared that CM, for the taxpayers, is not necessarily the best value or the lowest price.

Mr. Biller continued by providing two reasons why he believes everyone wants to use alternative procurement methods over competitive sealed bidding; (i) it is easy because you just issue a request for proposals or request for qualifications and then choose which vendor you want because competition isn't the driving force and contractors are chosen based on their resume and, (ii) it saves time because first a study is done, then the concept, then ask the state for money for design, hire a designer, design the project, then ask the state for construction money, then there is a two-three year construction period, concluding that this process is easily a five year process at best. He stated the claim being made that using CM saves time is a weak argument, however, he provided a hypothetical case of a federal requirement that all buildings be ADA accessible within six months is a good example for the use of CM because of the time constraint.

Mr. Biller provided the Workgroup an explanation on "complexity", stating that anything can be complex, and that complexity is hard to define. He shared that he does not believe a dorm, recreation facility, or a firehall, should be considered complex, however a rotunda renovation or a \$125 million research facility, may be considered complex. He stated that some universities make the claim that because something is on campus that makes it complex, however, every job at the university is on campus which would make everything complex.

Mr. Biller addressed change orders to the Workgroup. He explained the process for design-bid-build (DBB) as, first design the project, then bid the project, then build the project. Mr. Biller explained that change orders are generated by the owner when the owner or architect want to change something, left something out of the project, or an unknown was discovered, but not because the contractor left something out in their bid. He explained that CM projects have change orders and with a CM contract there is a contingency included that is often millions of dollars so when change orders are needed, they are funded from the contingency.

Mr. Biller explained that the pandemic and supply chain challenges are being cited as reasons to use CM. He shared that pre-pandemic equipment orders were filled quickly and now it is taking months or even years without explanation to fill orders. He stated that some claim that using CM will cure or help this problem but eliminating competition by using CM allows contractors to raise their prices.

Next, Mr. Biller began his PowerPoint presentation to the Workgroup and shared that his company has over 100 years of experience working at a university campus where his company built over 100 projects using the competitive sealed bid process. He shared that when the university began using alternative procurement methods his company was told that they are qualified but not as qualified as another company to work on buildings that his company built. He shared that this situation is not unique to his company. Mr. Biller explained that he started gathering procurement data over \$5 million from the universities and is beginning to gather the same data from cities and counties. He explained that he chose the \$5 million project amount because most universities use the bid process for projects valued under \$5 million.

Mr. Biller pointed to data on his PowerPoint presentation, stating that some may claim the data presented today is wrong and that 60-80% of the projects are bid out, which is true, but those projects are under \$5 million. He shared that when you look at dollars spent, the numbers are very different and the information on the presentation is for capital projects over \$5 million. Mr. Biller pointed out that over the last 13 years there had been \$6.3 billion spent on construction projects at Virginia universities and \$5.9 billion of that was procured using alternative methods, not competitive bidding. He added that he has the raw FOIA data used to develop the information being shared today and he brought paper copies for the Workgroup. He stated that in the last ten years the use of alternative procurements has gotten pervasively worse and the 2021 data shows there are no projects bid. He further explained the first slide, stating that of the 262 projects over \$5 million only 42 were competitively bid, noting that 10 contractors received awards using alternative methods. He shared that two contractors did one-third of the work and had these projects been competitively bid, there is no way this would have happened. Mr. Biller finished the first slide stating that if companies like his, and others, would have been allowed to compete then a lot more people would have gotten opportunities that the mid-size companies have been eliminated from.

Next, Mr. Biller presented slides that focused on three universities construction spend. Before explaining the data on the first university, James Madison University, he informed the Workgroup that his company has built over 100 buildings at JMU and recently finished a \$15 million project there. He stated that JMU spent \$789 million on construction and only 8.2% was competitively bid, adding that the three contractors that received 57% of the total money spent are capable of bidding on projects rather than being subjectively awarded projects. Mr. Biller presented data on Old Dominion University (ODU) and William and Mary (WM), stating that ODU spent \$327 million on construction and only 4.8% was competitively bid, and WM spent \$656 million on construction and none of those projects were competitively bid.

Mr. Biller presented a slide that listed the top ten contractors by earnings between 2008-2021 and noted that his company ranks around 15th. He stated that a lot of universities, when asked why they use CM, they respond “because its allowed and we like it”. He shared that his company has done CM projects at University of Virginia (UVA) and at JMU and he would do another CM project tomorrow because he makes more money on CM projects than bid projects.

Next, Mr. Biller addressed cost and the argument that the CM method saves money. He shared that legislators have asked him to compare the most recent dormitory project that was bid to a dormitory project that was CM and he cannot do the comparison because a dormitory project has not been bid in 15 years. He shared that the City of Richmond raised meals taxes to build four new schools in the last couple of years and because the City used CM rather than the competitive bid process the City was able to only build three schools.

Mr. Biller shared with the Workgroup that DGS keeps a listing of what construction is supposed to cost on their website which is updated each year. He stated that he sampled

four dormitory projects comparing the cost of the project to the DGS listing of project costs and he calculated that the four projects cost almost \$56 million more than they should have cost. Mr. Biller pointed to the next slide that outlined recent municipal projects that are being procured using CM, such as schools, towers, and police stations.

Mr. Biller concluded his remarks speaking to SB 954. He stated that the bill had what he believed was the best solution and that it boils down to a couple of things that the legislation addressed; (i) projects over \$125 million are most likely large and complex so use whatever procurement method you want, (ii) complexity and all factors that a waiver is needed for in the cases where projects are under \$125 million and should be done CM. He also addressed the purpose of the preconstruction services language in the bill stating that public bodies should be able to hire for those services but after those services are complete, the project goes out to bid.

Mr. Damico thanked Mr. Biller for his presentation on behalf of VCPA and Senator Petersen and asked if the Workgroup members have any questions.

John McHugh asked Mr. Biller who did the analysis of the FOIA data collected? Mr. Biller stated that the analysis was done internally at Nielsen.

Mr. McHugh asked Mr. Biller why \$5 million and above was selected for projects to analyze if the capital project threshold during this timeframe was \$2 million? Mr. Biller explained that there was nothing magical about the \$5 million other than trying to exclude non-capital projects like sewer projects and smaller projects that are typically bid.

Mr. McHugh asked if the JLARC study that Mr. Biller referenced is the 2016 JLARC study and asked that the Workgroup look at the study. Mr. Biller shared that there is a table in the report that states the only method that is best quality and lowest price is design-bid-build.

Mr. McHugh asked Mr. Biller about his statement that CM is destroying small and mid-size businesses and asked if that is from Mr. Biller's perspective or from the small/women/minority community? Mr. Biller responded that a mid-size contractor cannot get through the filters of the complex packages to get any work sharing that only the large companies get the work.

Mr. McHugh asked Mr. Biller about the data he presented and if he was successful in changing law in 2018? Mr. Biller responded that yes, the law has changed but it hasn't fixed the problems. Mr. McHugh followed stating that the data should be looked at since the 2018 law change.

Mr. McHugh concluded by asking Mr. Biller what the bonding capacity of his company is. Mr. Biller stated that their single contract is \$150 million and cap is \$200 million.

V. Public Comment on SB 954

Next, the Workgroup heard public comment from stakeholders on SB 954, first hearing comments from the stakeholders in support of SB 954.

The first stakeholder to comment in support of SB 954 was Jack Dyer, owner of Gulf Seaboard General Contractors, a certified minority and small business for over 42 years. He first provided an overview of his company experience stating that he has built projects over \$100 million such as schools, courthouses, complex projects, new buildings, old buildings, and multi-phased projects. Mr. Dyer shared that prior to CM being used his company did multiple projects with Mary Washington, Virginia Commonwealth University, Virginia State University, and J. Sargeant Reynolds Community College and was very successful, however, once the use of CM began, he was told that his company is qualified to do the work but did not score high enough compared to the multinational companies. Mr. Dyer stated that it is a shame to have to fight for business with our own government and that the elected representatives seem determined to put medium size businesses out of business with their actions, not maliciously but because they do not know any better. He stated that SB 954 is not a repeal of the present code and that it is adjusting the code to allow maximum feasible competition and open access. He stated that the changes to the Virginia Public Procurement Act (VPPA) over the decades has brought on negative aspects and as such, has returned us to a pre-1982 procurement condition with no respect for the code, no uniform policies, no standards, application conflicts between public bodies, favoritism, and questionable corruption. Mr. Dyer shared that small and medium size companies and subcontractors are in jeopardy of going out of business. He stated that the VPPA principles are that public procurement is characterized by competitive bidding because the public perceives that this method ensures equal access to public business, provides control over contracting officials, and implies cost savings, and clearly establishes competition. He concluded his remarks by addressing an earlier question posed by Mr. McHugh, who asked why companies do not partner with larger companies on CM projects to gain more experience. Mr. Dyer asked why he should have to partner on a project he is clearly capable of doing, providing an example of a \$105 million high school bid project that his company completed on time. Mr. McHugh asked Mr. Dyer the bonding capacity of his company, to which Mr. Dyer shared about \$155 million for single projects and about \$200 million aggregate. Mr. McHugh asked if Mr. Dyer recently won an award with VCCS, to which Mr. Dyer stated yes.

The second stakeholder to speak was Todd Morgan, the president and owner of MB Contractors, a 111 year old company. He began his remarks sharing that his company has completed K-12 projects, millions of square feet, across Virginia. Mr. Morgan pointed to the PowerPoint presentation VCPA shared earlier, specifically Roanoke County and Roanoke City, stating that his company has done work for both and now they are moving towards more CM projects. He stated that he has partnered with CM's before on projects and on numerous occasions he spends his time trying to keep the CM from hiring his employees, asking why he would want to partner with someone when he can do the work himself. He concluded his remarks by stating that if the Workgroup truly cares about

competition in procurement and tax dollars, take this issue seriously. Mr. McHugh asked Mr. Morgan what his company bonding capacity is, to which Mr. Morgan stated \$50 million for single projects and \$80 million for combined.

The third stakeholder to speak was Cindy Shelor, owner of John T. Morgan Roofing and Sheet Metal Company, a 90-year-old company. She stated that she is a subcontractor, and competitiveness is not there in CM projects. She supports this legislation and Virginia Association of Roofing Professionals also supports this legislation. She concluded her remarks stating that there needs to be fair and open procurement in all aspects when tax dollars are spent. Mr. McHugh asked Ms. Shelor what her company bonding capacity is, to which Ms. Shelor stated less than \$10 million on single projects because she is a subcontractor.

The fourth stakeholder to speak was Jack Avis, owner of Avis Construction. He began by stating that his company has completed projects at Virginia Military Institute, VA Tech, Radford, and several Community colleges but have been shut out of those projects and now K-12 projects are using CM and PPEA. Mr. Avis shared that it is unique that so many from Roanoke are here today, stating that it is because businesses out there are getting destroyed due to not as much work out that way. He stated he was told that his company was not qualified to renovate a building that his company previously built and this is destroying more than just general contractors, it's hurting subcontractors, architects and engineers, insurance companies, bonding companies, etc. He continued by stating that he wants to know why these projects can't be bid out and hire a pre-construction consultant then bid the project, sharing that he renovated a major high school project bid, valued at \$37 million during COVID that was shut down for two weeks and still finished on time. Mr. McHugh asked Mr. Avis what is company bonding capacity is, to which Mr. Avis stated \$80 million for single projects and \$110-\$120 million aggregate.

The fifth stakeholder to speak was Tom Evans of Southwood Building Systems. He shared that he started the company 48 years ago and built the company on competitive sealed bidding. He shared that his company has been hurt by the use of CM. He stated that today, there are 4-5 projects out as CM projects that are \$15 million, so no one is paying attention to the regulations and the local governments and higher education say they do not care because it is their money and they will spend it how they want. He concluded his remarks stating that there is no reason why these projects cannot be bid. Mr. McHugh asked Mr. Evans what his company bonding capacity is, to which Mr. Evans stated \$75 million for single projects and \$125 million aggregate.

The sixth stakeholder to speak was Sam Daniel, primary owner of Daniel and Company. He stated that he has grown his business through competitive sealed bid work sharing that around the 2008-2010 timeframe is when he began to see his work at the universities diminish. Mr. Daniel echoed the previous comments made and stated that CM and alternative procurement methods have negatively impacted business over the years, and he hopes that a change can be made. He concluded his remarks by providing the bonding capacity of his company, stating that it is \$30 million for single projects and \$60 million

aggregate. Mr. McHugh asked Mr. Daniel if his company has a term contract with VCU, to which Mr. Daniel responded yes and that he just submitted for one at UVA.

The seventh stakeholder to speak was Matt Benka with the VCPA. He shared that their membership is significantly larger than just the companies that spoke today and their membership is comprised of midsize general contractors. He stated that they have been shut out of the market for over a decade and a half and he hopes they have proven that today. Mr. Benka stated that it is important to remember that this is the states money that the colleges are spending and are overspending dramatically as shown with DGS data and contracts are being given to a handful of contractors.

Mr. Damico thanked Mr. Benka and his members for coming today and testifying, stating that he would like a better understanding on some of the testimony today, specifically regarding his members being told they are not qualified to do the work because if a company has been in business for 40 years or 111 years, they have the experience to do the work. Mr. Damico asked Mr. Benka to share what the public bodies are saying to the contractors when being told they are not qualified to do the work. Mr. Benka stated that is a hard question to answer because this happened all of a sudden when procurement officers realized they can pick whichever contractor they want. Mr. Benka explained that his members would receive letters saying they are not as qualified as the larger companies or being told that they are not qualified enough to get out of the prequalification phase on buildings they constructed themselves.

Next, the Workgroup heard comments from stakeholders in opposition to SB 954.

The first stakeholder to speak was Rich Sliwoski, Vice President of Facilities Management at VCU. He began his remarks by reading an excerpt from Nielsen's website, which he said describe the benefits of using CM. Mr. Sliwoski shared regarding time on projects, that every month a project is delayed, it costs an additional million dollars and early release packages are only available with CM. He stated that when using low bid the agency has no oversight into the project management team assigned to the project, which could include someone who has never worked on the type of project. He stated that auxiliary funds are not funds from the state, instead they are funds from housing revenues and philanthropic efforts. Mr. Sliwoski stated for housing projects, there is a time schedule that has to be met and CM is the best for providing that. Mr. Sliwoski addressed contingency funds on CM projects and explained if the contingency funds are not used then the funds are returned back to the owner, adding that with his last four projects, he has returned \$8 million back to the Commonwealth. He shared that under design-bid-build, that contingency is retained in the pocket of the contractor. Mr. Sliwoski shared that at the Virginia Community College System (VCCS), there have been 33 opportunities out, and 30 of those are bids. He stated that CM came about in the early 2000's when concerns arose about minority contractors being frozen out, and CM has done away with this by expanding to all aspects of the community. Mr. Sliwoski concluded his remarks by stating that Century Construction, who he believes is a member of VCPA, has been given 27 opportunities to bid from VCU in the last year and VCU has received no responses.

The second stakeholder to speak was Brandon Robinson of Associated General Contractors of Virginia (AGCVA), the construction association that represents 500 companies and 300 contractors in Virginia. He shared that some members support the bill and members oppose the bill, however they oppose the bill as it was introduced. Mr. Robinson stated there has been compelling testimony today about the need for change because the market is skewed, but the market is not skewed. He stated that earlier it was brought up that in 2018 the statute changed and requires DGS to submit annual reports for projects \$2 million and greater, which was part of the compromise in 2018, and the data since 2018 by projects and amount, the majority are DBB (60-70%). Mr. Robinson stated that CM is an important tool in the toolbox and the JLARC report is a great resource that explains how CM is advantageous. He shared that he submitted written comments for consideration by the Workgroup, if the Workgroup decides a change is needed. He stated that AGCVA compiled a small group of their members with an equal number of people that support the bill and oppose the bill to come to common ground compromise. He finalized his remarks by pointing out the considerations for review, (i) procurement qualifications should be based on construction experience, no project delivery method, (ii) complexity of the project should be the primary determining factor for using alternative methods, and (iii) they would like to see an increase in transparency when choosing a method and selecting a contractor.

The third stakeholder to speak was David Turner, Vice President of Kjellstrom and Lee, a midsize general contractor that works on public and private projects that are both large, small, complex and not so complex. He shared that most of the projects his company completes are CM and that they do a significant amount of CM work with the Commonwealth, while being a local company that works exclusively in Virginia. Mr. Turner stated that his company competes with many firms that are multistate firms, national, or international firms, yet his company still finds success. He shared that his company has grown about three to four times over the last 20 years, in employee count and annual revenues. He stated he has seen first hand how CM has contributed to his success and the success of their trade partners, particularly the ones in the SWaM community. He shared that the bonding capacity for his company is \$150 single and \$250 aggregate. He concluded his remarks stating that he is speaking as a representative of AGCVA today and has spent much time over the years on legislative efforts surrounding construction procurement issues, which are complex, and even within AGCVA their members have differing views stating that the considerations shared with the Workgroup represent a good first step towards a consensus within the AGCVA. Mr. Damico asked Mr. Turner when his company first started if CM was the main procurement method or were there other procurement methods used? Mr. Turner stated that the company was formed in 1961 and over the years his company has done every method in existence, however, the period discussed today was primarily bid work and private industry CM work which has grown into public CM work. Mr. Damico followed up by asking Mr. Turner how his company transitioned their expertise in bid work to being competitive with CM? Mr. Turner stated that it was not really a transition, that it was a different approach to the process and a lot of sweat equity and building relationships and delivering the projects well.

The fourth stakeholder to speak was Taylor Brandon, Vice President of F. Richard Wilton Jr. Inc, a Richmond company for 70 years. Mr. Brandon shared he also serves on the state board of contractors and on the board of AGCVA. He stated his company does all delivery methods for projects including lump sum, CM, design-build, and there are pros and cons to each. He shared as a subcontractor, all of his estimates are lump sum and provided at no charge and one might think as a subcontractor that he would not want to bid a job multiple times but there are benefits to doing this. He expanded on the benefits, stating that if (i) there is a GC already chosen, he will often receive a scope sheet that is very detailed about who is responsible for which work, so there are no scope gaps, (ii) ability to avoid bad bids because if a bid is too low because something was left out then there is an opportunity to fix it, which cannot be done on a hard bid job and the subcontractor would have to deal with it, (iii) part of the criteria to get on a subcontractor list is experience, manpower, ability to do the job, and (iv) can discuss and work through discrepancies in the drawings with the owner and CM. He also shared more benefits to CM are the allowances, ability to assist with value engineering to help with budget, coordinate products before building, and which preconstruction can take longer but the job goes faster, more efficient, and the project team is usually better and more qualified. Mr. McHugh asked Mr. Brandon how his company finds out about work on major projects? Mr. Brandon stated he is invited to bid by the CM. Mr. McHugh followed up asking what his company bonding capacity is, which Mr. Brandon stated that as a subcontractor they are not usually required to carry bonds.

The fifth stakeholder to speak was Adam Smith, Associate Director of Procurement for Capital Construction at VA Tech, speaking on behalf of VA Tech and VASCUPP to express deep concerns with SB 954. He stated SB 954 will significantly impact the availability of an essential contracting tool and at VA Tech, due to the size and scope of the campus and projects, VA Tech regularly uses all procurement methods and that maintaining the authority to choose such appropriate method is critically important as they manage a capital program in excess of one billion dollars. Mr. Smith stated that sometimes CM is the right solution, and sometimes it is not, however the authority to make the decision on procurement methods to ensure appropriate mitigation of project risk is important so they can stay within budget and schedule, all while fulfilling the unique needs of the institution and respective projects. He shared the concerns brought up today is a significant departure from the best procurement practices, referencing the JLARC report, he stated that the report is correct in that dollar threshold is not the most effective criteria to use to determine the best procurement method as cost does not reflect the projects complexity or time sensitivity. He concluded his remarks by stating that all capital projects undergo significant review, both internal and externally, and that the CM method provides better opportunities to utilize SWaM businesses over DBB stating that for all these reasons it is not in the best interest of the Commonwealth to adopt SB 954.

The sixth stakeholder to speak was James Patteson, retired Director of Public Works at Fairfax County. He shared his past experience, stating that the total value of a building is not only in the construction but also the quality of the work. Mr. Patteson stated that he is concerned about SB 954 limiting the use of CM for localities with the proposed threshold

and complex definition changes. He shared that in CM the contractor is added to the team during preconstruction and is valuable to have the contractor, A/E, and the owner at the table for adding value engineering and ownership. He addressed remarks made earlier about CM being used because it is easy, explaining that CM is actually harder because it requires another partner at the table and at the end of the project it delivers better value because of the partnership. He addressed the suggestion to hire a constructability professional to work with agencies through design explaining that is very different than working with the contractor that will be responsible for delivering the project and taking on the project risk. He concluded his remarks stating that with CM, 90% of the work is performed by subcontractors, it is competitively bid, and can add qualitative criteria to this approach which adds value.

The seventh stakeholder to speak was Elizabeth Dooley representing VAGP which has over 1300 members working in the procurement field. She stated she is also speaking on behalf of VML and VACO, who also oppose the bill. Ms. Dooley shared that the DGS report shows a majority of construction contracts at the state and local level are awarded through DBB and that CM is used where appropriate. She explained when public bodies use CM, it is a well-reasoned decision and not chosen arbitrarily, explaining that CM projects finish earlier than DBB for various reasons, such as the ability to leverage options for early site work, constructability reviews, and value engineering. She explained that CM allows for a guaranteed maximum price early on and the ability to secure better interest rates on bonds. She stated that she does not agree that CM cost more than DBB or is less competitive and that it is difficult to compare DBB and CM because only one method is used on each procurement. She concluded her remarks by asking the Workgroup to advise the General Assembly that no changes are necessary and the current processes work well across the Commonwealth.

The eighth stakeholder to speak was Julia Hammond, on behalf of the Associated Builders and Contractors which is Virginia's largest construction association representing general contractors, subcontractors, and skilled trades across the Commonwealth. She stated she is also representing the Federation of Independent Business Virginia, a small business trade association. She stated the vast majority of Virginia's contractors, their associations, subcontractors, and skilled trades, oppose this legislation both during the General Assembly session and here today. Ms. Hammond stated that there are things that we can work on, such as change orders or prequalification, but this legislation is not the way to do it. She stated that during 2018 everyone worked very hard on the changes that were enacted, which was not easy and required a lot of negotiation and study. She concluded her remarks by stating that from the DGS data, the changes enacted in 2018 are working and more procurement methods are being used and more contractors are a part of the process.

The final stakeholder to speak was Travis Bowers, representing the Black Business Alliance of Virginia. He shared the bonding limit of his company is more than zero but substantially less than the other businesses that previously spoke. Mr. Bowers explained that his company, THC Bowers, has done GC work, lump sum hard bid work, and has also gone the CM approach, putting his employees in the CPSM seminars and learn from

other companies. He stated that his company has learned and adjusted over the years, sharing that CM is a more inclusive route for the community. Mr. Bowers stated that during COVID, everyone experienced supply chain issues and that going forward, everyone has to work smarter. He concluded his remarks sharing that CM allows the minority community to take better advantage of relationship, not just as a prime but at a sub-tier approach, and that these relationships are not there with low bid. He strongly opposes SB 954.

Support in part/oppose in part:

The first stakeholder to speak was Chris Stone, Senior Principal with Clark Nexsen, one of Virginia's largest A/E firms. Mr. Stone stated his opposition to a portion of SB 954, specifically lines 186-191 and lines 234-239, explaining these sections in the bill break the CM services apart. He explained that when a client hires a designer, the designer starts with planning, programming, and is a part of the process through schematics and until the end of the project and when a client hires a construction manager, the designer is able to develop a relationship and design the project with input from the construction manager. He stated the proposed language would allow for the project to be bid at some point and has preconstruction services, but it is not clear when those services would end. He shared that this proposed process would be like changing horses in the middle of a race. He concluded his remarks by stating that this language has unintended consequences for a significant number of change orders because a contractor would build the project who wasn't involved in the design.

Neutral: none

VI. Public Comment

None.

VII. Discussion

Mr. McHugh requested an electronic copy of the FOIA data that Mr. Benka provided in hard copy format. Mr. Benka agreed to provide that data electronically, adding that he has submitted FOIA requests to higher education institutions for new data and asks if the colleges would share their information as well.

Mr. Damico requested that the Workgroup review the 2016 JLARC report that was mentioned today prior to the next meeting.

Mr. Tweedy stated that during the discussion today, competition was brought up a lot. He requested that for the next meeting if the Workgroup could have a better understanding of the process of how a CM is chosen to help gauge if the process is competitive.

Mr. Damico concluded by stating that today we heard that VCPA, AGCVA, and ABC, have all studied the issue and asked that they review the legislation again, AGCVA's

considerations, and determine if there is any changes that everyone could be in agreement with, prior to the next meeting.

VIII. Adjournment

Mr. Damico adjourned the meeting at 11:38 a.m. and noted that the next Workgroup meeting is scheduled for August 8, 2023 at 1:00 p.m. in the House Committee Room located in the Pocahontas Building.

For more information, see the [Workgroup's website](#) or contact that Workgroup's staff at pwg@dgs.virginia.gov.

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